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FEDERAL COMMUNICATIONS COMMISSION

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Streamlining the Commission's Antenna)
Structure Clearance Procedure)
and)
Revision of Part 17 of the Commission's)
Rules Concerning Construction, Marking,)
and Lighting of Antenna Structures)

WT Docket No. 95-5

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To: The Commission

**COMMENTS OF
INDUSTRIAL COMMUNICATIONS & ELECTRONICS, INC.**

Industrial Communications & Electronics, Inc. ("IC&E" or "Company"), by its attorneys, and pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, hereby comments with respect to the Commission's Notice of Proposed Rule Making in the above-referenced proceeding.¹ The Notice details the FCC's proposal to streamline the agency's antenna structure clearance process by implementing a uniform registration system for antenna structures; to revise Part 17 of the FCC's Rules by incorporating FAA Advisory Circulars; and to amend the Commission's Rules to make tower owners primarily responsible for antenna structures which require painting and lighting.

¹ Notice of Proposed Rule Making, WT Docket No. 95-5, FCC 95-16 (released January 20, 1995) ("NPR" or "Notice").

I. INTRODUCTION

IC&E has been engaged in all aspects of the communications tower business for almost twenty years. The Company was established in 1976 by individuals with extensive experience in all aspects of tower design, development, construction, maintenance and overall operation of tower facilities. IC&E has developed ten tower facilities which it owns and operates in the New England area. It utilizes those towers for its own SMR operations and rents space to other entities having antenna site requirements. In addition, the Company built and operates a state-of-the-art "tall tower" facility in the Miami, Florida area. It has also constructed over four hundred tower facilities for various clients in the cellular, paging and other radio-related businesses. Additionally, the Company manages numerous facilities for other entities.

IC&E owns and/or manages tower facilities which range in height from 180' AGL to 1049' AGL. It is intimately familiar with the local, state and federal governmental processes associated with tower construction, including, but not limited to, the applicable requirements of the FAA and FCC. It has worked regularly with both agencies in securing necessary regulatory approvals for a variety of antenna facilities throughout the country.

Because IC&E management has extensive experience relating to towers and other antenna facilities, the Company is highly qualified to comments on the issues raised in the Notice.

II. DISCUSSION

The Company supports the Commission's proposal to implement an antenna structure registration program. The current system is unnecessarily burdensome for both the agency and the industry, and, most critically, may not be the optimal approach for promoting the safety of air navigation. By contrast, the system proposed in the Notice should streamline the process for all participants and thereby promote compliance with applicable FAA and FCC requirements. It should accelerate the speed with which painting and/or lighting violations are corrected. Therefore, the Company supports adoption of the proposal in the Notice, as modified by the recommendations detailed below.

A. Antenna Structure Registration

The Company agrees that the public interest would be served by adoption of a uniform procedure for registering antenna structures and by creation of a common database listing for antenna structure information. Notice at ¶ 6. The streamlined, consolidated approach outlined in the Notice will simplify the clearance process for the Commission and its licensees.

IC&E recommends that the Commission limit the registration program to structures which currently require FAA review. See 47 C.F.R. §§ 17.7 and 17.14. According to the Notice, there are approximately 70,000 structures in that category. Registration of such a large number of facilities will require both time and resources, even with the streamlined procedure contemplated herein. The Company urges the Commission not to expand the scope of the proposal until the registration process is

completed, and the efficacy of the program tested.

IC&E believes that the registration process could and should be completed within one year. The structures in question have already been reviewed by the FAA so completion and submission of the Form 854 should be a ministerial, relatively effortless task. Because the Company anticipates little difficulty in complying with this requirement, it recommends that all registrations be accepted at any time during the proposed one-year period, unless constraints on the FCC's own resources dictate a phased process. If so, IC&E supports implementation by geographic area rather than by antenna height or upon license renewal.

However, the Company's support for the proposed registration procedure is conditioned on its assumption that this process will not be permitted to delay construction of a structure for which a No Hazard or comparable FAA Determination has already been obtained. Similarly, it should not delay the issuance of an authorization for a prospective licensee on the facility. It is IC&E's understanding that the registration program is intended to facilitate the FCC's record keeping processes relating to antenna structures. It is not intended to supplant or even supplement the FAA's primary responsibility for ensuring that those structures are not permitted to compromise the safety of air navigation. Thus, the Company urges the FCC to adopt and adhere to aggressive standards for the time in which antenna structure registrations are reviewed and processed. It should also consider adoption of a procedure comparable to its temporary and conditional license permits whereby temporary registration numbers could be issued and authorizations granted to licensees proposing a facility which has been

approved by the FAA and for which a Form 854 has been filed. See 47 C.F.R. § 90.159.

IC&E also recommends that the rules adopted in this proceeding describe in detail the ongoing licensing responsibilities, if any, of non-owner licensees under the registration procedure. The Notice states that licensees/permittees would not be required to request modifications of their authorizations when the change is in the antenna height or when painting and lighting is involved. Notice at ¶ 16. By exclusion, this appears to indicate that individual license modifications will continue to be required if a modification or correction is needed in other information regarding the structure, for example the ground elevation or coordinates of the site. It is not clear why the Commission has limited this aspect of its proposal exclusively to changes in the structure height since height, ground elevation and coordinates are equally integral to the FAA's determination and to the FCC's licensing process. If individual licensees will retain their licensing obligations for such corrections, the FCC must determine within what time period after receipt of the corrected Form 854 licensees must file modification applications, and it should specify that no forfeiture can be assessed for operation during that period. Clarification of this matter will be needed to apprise licensees of their regulatory responsibilities.

The Company believes that the registration procedure proposed should apply to stations licensed on a geographic basis, such as cellular and PCS, just as it does to structures authorized under a site-specific licensing scheme. In either case, the tower owner must confirm that the structure will not pose a hazard to air navigation before it

is constructed. Once that determination has been made by the FAA, the structure should be able to be built and parties should be able to utilize it. If the particular applicant must secure a site-specific license, then the temporary registration procedure suggested above should be available until registration is completed. Parties operating pursuant to a geographic license likewise should be permitted to initiate service once the FAA's requirements have been satisfied by using a temporary registration number upon notification or by providing the registration number at some later date.

The Company also wishes to respond to the specific issues raised in the Notice at ¶ 16 (a) - (i):

16(a). Tower owners who voluntarily elect to paint and/or light their structures should be required to register the facilities to avoid confusion about the height of the structure. On a related point, IC&E recommends that any such painting or lighting should conform to the requirements of the FAA.

16(b). Access to the consolidated antenna structure database should be available through a third-party provider, such as Interactive Systems, Inc.

16(c). At this stage in the development of telecommunications, the Company would hope that the FCC and the industry would be able to utilize electronic registration, preferably by dial-up modem, for a form as simple as the Form 854.

16(d). IC&E is not persuaded that the integrity of the database necessitates a registration renewal process. However, a modification should be required whenever there is a change in any of the relevant information about the structure

itself or its ownership.

16(e). The simplicity of the process and more than offsetting reduction in overall agency costs due to its implementation argue against application of a registration fee. If such a fee is, nonetheless, adopted, it should be nominal and should simply recover the costs of implementing the procedure.

16(f). The registration process should include a certification that the structure complies with all ANSI standards regarding RF emissions. However, as discussed previously, only towers requiring FAA notification should be included in the registration process.

16(g). Tower owners, for the most part, already are familiar with their obligations to paint and/or light a structure in accordance with FAA requirements. Nonetheless, in light of the proposed shift in primary responsibility for violations from licensees to owners, the notifications suggested in the Notice all would be appropriate.

16(h). Any issues relating to the appropriateness of the FCC's rules regarding environmental issues should be addressed in a separate proceeding.

16(i). The increasing industry acceptance and broad availability of GPS suggests that "corrected GPS" should be the required method of measurement of site location and ground elevation. The same degree of accuracy should be required for all services: a tolerance of two meters for ground elevation and one second for latitude and longitude. Additionally, the tower owner should certify the accuracy of the structure height above ground level within two meters.

B. Part 17 Update

The Company agrees with the Commission's proposed incorporation of FAA Advisory Circulars into Part 17 of the FCC's Rules. Further, the FCC should take this opportunity to review that section of its Rules to ensure consistency with FAA regulations. In cases of discrepancy, the FAA rules should govern.

However, IC&E disagrees with the FCC's intention to grandfather for ten years the painting and lighting of existing structures that received clearance prior to January 1, 1996. Doing so will perpetuate inconsistencies in the FCC's database, and exacerbate the problems which, in part, prompted the instant Notice. Tower owners should need no more than five years to bring their facilities into compliance with new regulations. Any extension beyond that date would risk sacrificing air traffic safety for regulatory convenience -- an unacceptable trade off from a public interest perspective.

C. New Requirements for Antenna Structure Owners

Although IC&E is a tower owner, and will, therefore, assume new obligations under the FCC's proposal, it endorses wholeheartedly the recommendation to place primary responsibility for painting and lighting compliance with structure owners rather than licensees. The current system is not reasonable since it imposes legal obligations on parties with no legal authority to perform them. Licensees typically are not permitted to paint and/or light a structure on which they are merely a tenant despite FCC requirements which effectively assume the contrary. In fact, IC&E questions how the FCC proposes to empower licensees to assume responsibilities commensurate with the obligations it intends to impose, albeit on a secondary basis.

The Notice would properly shift the primary responsibility for compliance with FAA regulations on the tower owner. Licensees could continue to be held liable if the FCC were unable to locate the structure owner. The Company suggests that, if the FCC were required to seek assistance from the licensees in finding the owner before licensees could be assessed any liability, the likelihood of locating the structure owner would increase significantly. IC&E suggests that such a requirement be incorporated in the FCC's rules. It also recommends that licensees be afforded some reasonable period of time after notification of non-compliance to correct the problem before they become subject to the Commission's forfeiture provisions.

III. CONCLUSION

The Company endorses the Commission's proposed antenna structure registration procedure, as modified herein, as well as its Part 17 update and its assignment of primary responsibility for FAA compliance to tower owners. IC&E urges the Commission to proceed expeditiously to finalize rules consistent with its proposal and the recommendations contained herein.

Respectfully submitted,

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